

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

NO PROTEST RECEIVED  
Release copies to District

Date: [REDACTED]

Surname: [REDACTED]

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to: [REDACTED]

Date: [REDACTED]

Employer Identification Number [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated on [REDACTED] for charitable purposes. You will engage primarily in providing assistance for persons suffering from brain injury through a therapy technique known as [REDACTED].

[REDACTED] is a non-medical alternative source of treatment and development of brain injured children and adults. The concept was developed by [REDACTED] as initially researched by [REDACTED]. Patterning is an individually tailored development program that taps the potential of healthy, unhurt brain cell tissues of a brain-injured individual and trains the healthy tissues into adapting and taking on the neurological functions absent or lost to a person who is mildly to severely neurologically impaired. The therapy is a lengthy process administered by [REDACTED] persons (usually by family members and other solicited persons) on the brain-injured individual at short intervals that vary from one to four hours and normally occur [REDACTED] days per week. Following each stage of higher development growth by the brain-injured person, new and additional [REDACTED] are developed and instructions are given to the persons who administer the therapy.

You will raise funds to provide grants toward the payment of fees for consultation, guardians, and treatment practitioners in the field of [REDACTED]. The beneficiaries of your grants will be selected by your Board of Directors based on financial needs and serious use for your grant purpose. The amount of funds you will grant will consider the

Your president and [REDACTED] is [REDACTED]. Your other directors and officers are [REDACTED] er,

██████████ is a specialist who provides consultation services in the patterning technique through his wholly-owned for-profit entity called ██████████

for initial evaluation and program development and one-year fee ongoing consultations by phone or in person. The one-time initial fee is payable in advance and is \$[REDACTED] performed at [REDACTED] or \$[REDACTED] at the client's home. The ongoing consultation fee is \$[REDACTED] plus supplemental and travel fees for each visit if performed at the client's home. The ongoing consultation fee of \$[REDACTED] may be paid in [REDACTED] payments, or a reduction to \$[REDACTED] with [REDACTED] payments of \$[REDACTED] or a further reduction to \$[REDACTED] with a one-time payment.

Section 501(c)(3) of the Code provides exemption to organizations organized and operated exclusively for religious, charitable or other exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(a)-1(c) of the Income Tax Regulations defines "private shareholder or individual" as persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized and operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet this requirement, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

In est of Hawaii, A Hawaiian Corporation v. Commissioner, 71 T.C. 1067 (1979), the Tax Court denied exemption under section 501(c)(3) of the Code to an organization that was essentially controlled by a separate commercial entity and was engaged primarily in providing instructional programs under licensing arrangements with the commercial entity. Although the organization had an educational purpose, it is part of a franchise system which is operated for private benefit and its affiliation with this system taints it with substantial commercial purposes.

In International Postgraduate Medical Foundation, T.C.M. 1989-36, the court held that the Service had properly revoked the Code section 501(c)(3) status of an organization that did not operate exclusively for exempt purposes. The court based its conclusion, in part, on the fact that a related for-profit corporation had benefited substantially from the manner in which the activities of the exempt organization were conducted. In these circumstances, the court said, an organization is not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code, even though it furthers other exempt purposes.

In this case, the organization had the substantial non-exempt purpose of benefitting a for-profit travel agency controlled by parties related to the organization. The organization had been formed and was controlled by an individual who had previously operated all tour operations through a for-profit entity. The travel agency received substantial fees from customers attending tours promoted by the organization, under a non-competitive arrangement.

In Church by Mail, Inc. v. Commissioner, 765 F.2d 1387 (9th Cir. 1985), aff'g T.C.M. 84-349, the court upheld denial of Code section 501(c)(3) status to an organization because it operated for the non-exempt purpose of providing a market for the services of a for-profit fund-raising firm owned by parties related to the organization. Key facts considered by the court included that

employees of the for-profit firm devoted two-thirds of their time to the organization's business; that the majority of the organization's income went for payments to the for-profit firm; and that the controlling parties profited from the relationship. The court rejected the organization's argument that the crucial inquiry was the reasonableness of the contracts involved, saying that the "critical inquiry" was instead "whether the entire enterprise is carried on in such a manner that the for-profit organization benefits substantially from the operation of the Church," 765 F.2d at 1392 (citing est of Hawaii v. Commissioner, 71 T.C. 1067).

In Better Business Bureau of Washington, Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court interpreted the requirement in Code section 501(c)(3) that an organization be "operated exclusively" by indicating that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. This means that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption, regardless of the number and importance of truly exempt purposes.

In Leon A. Beechly Fund, 35 T.C. 490, 518 (1960), revocation of a foundation's exempt status was sustained even though the foundation emerged from the transactions without financial loss. The court noted in that case that the foundation's primary objective in entering into the transaction was to benefit the stockholders of a particular business corporation with the "objective of ultimately benefitting charities running a poor second." The test was not ultimate profit or loss, but whether, at every stage of the transaction, those controlling the exempt organization guarded its interests and dealt with related parties at arm's length.

To qualify for exemption under section 501(c)(3) of the Code, you must establish that you are both organized and operated exclusively for one or more of the purposes described in that section and that you do not violate the express prohibition in the statute against inurement of net earnings to the benefit of any private shareholder or individual or the other exclusive requirements under the regulations.

Our analysis of your case indicates that you are primarily engaged in providing a market for the professional services of [REDACTED]. This is evidenced by the following: You were formed, and you are operated and controlled, [REDACTED]; and your funds will be distributed as grants for the payment of [REDACTED].

By engaging primarily in activities of providing a market for a related for-profit entity, or the professional services provided by a principal officer, you are primarily engaged in activities that are not in furtherance of an exempt purpose. As such, you are not operated exclusively for an exempt purpose pursuant to section 1.501(c)(3)-1(c)(1) of the regulations.

Also, by serving primarily the interests of a for-profit entity, its owner and your officer, you are primarily serving private rather than public interests. As such, you are once again not operated exclusively for an exempt purpose pursuant to section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

Further, because [REDACTED], as defined in section 1.501(a)-1(c) of the regulations, your eventual payments to [REDACTED] either directly or through [REDACTED], would be a prohibited inurement of your income. Therefore, you are not operated exclusively for an exempt purposes pursuant to section 1.501(c)(3)-1(c)(2) of the regulations.

You are indistinguishable from the organizations described on est of Hawaii, Church by Mail, Inc., International Postgraduate Medical Foundation, and Leon A. Beechly Fund, supra. In these cases the courts held that the organizations did not qualify for exemption because they were engaged in substantial non-exempt activities and served the interests of those for-profit entities.

Therefore, we conclude that you are not exempt under section 501(c)(3) of the Code.

Contributions to you are not deductible under section 170 of the Code.

You are required to file federal income tax returns on Form 1120.

You have the right to protest our ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Baltimore, Maryland. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

The appropriate State Officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely,

copy: D [redacted]

copy: [redacted]

copy: [redacted]

Form	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
CODE	[redacted]	[redacted]				
Surname	[redacted]	[redacted]				
Date	[redacted]	[redacted]				